

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MICHAEL ANTON HERNANDEZ,)	4:09CV3070
)	
Petitioner,)	
)	
v.)	MEMORANDUM
)	AND ORDER
ROBERT P. HOUSTON, Director, and)	
FRED BRITTEN, Warden T.S.C.I.,)	
)	
Respondents.)	
)	

This matter is before the court on Petitioner's Motion for Default Judgment (filing no. [14](#)), Motion for Relief From the State Judgment (filing no. [15](#)), Motion to Compel (filing no. [17](#)), Motion to Request Additional Documents (filing no. [17](#)), and Objection to Brief (filing no. [21](#)).

I. MOTION FOR DEFAULT JUDGMENT

Petitioner alleges he is entitled to default judgment because the court ordered Respondents to file an answer by June 27, 2009, and they did not do so. (Filing No. [14](#) at CM/ECF p. 1.)

The court's progression order required that Respondents either file a motion for summary judgment or file state court records in support of an answer by June 27, 2009. (Filing No. [8](#) at CM/ECF p. 6.) Although Respondents filed State Court Records on June 29, 2009 (*see* Docket Sheet), the filing was timely. June 27, 2009, was a Saturday and is therefore excluded from the applicable time period, which runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk's office is inaccessible. *See* [Federal Rule of Civil Procedure 6\(a\)\(3\)](#). In this case, the time period ran until the end of Monday, June 29, 2009. Accordingly, the filing was timely and Petitioner's Motion for Default Judgment (filing no. [14](#)) is denied.

II. MOTION FOR RELIEF ON THE STATE JUDGMENT

After carefully reviewing Petitioner's Motion for Relief, the court finds relief is not warranted at this time because Petitioner's Motion argues the merits of his Petition. The merits of Petitioner's claims will be decided in accordance with the progression order entered by the court on May 14, 2009. (See Filing No. [8](#).)

III. MOTION TO COMPEL

On July 15, 2009, Petitioner filed a Motion to Compel in which he claims he did not receive the designation of State Court Records filed by Respondents on June 29, 2009. (Filing No. [16](#).) The court presumes Petitioner has since received the designation, given he subsequently filed a Motion to Request Additional Documents (filing no. [17](#)). However, because the record is unclear in this regard, Petitioner's Motion to Compel (filing no. [16](#)) is granted and Respondents are ordered to provide copies of the designation of State Court Records filed by them on June 29, 2009, to Petitioner by August 30, 2009.

IV. MOTION TO REQUEST ADDITIONAL DOCUMENTS AND OBJECTION TO BRIEF

In Petitioner's Motion to Request Additional Documents, he asks that Respondents provide him with 33 additional documents not included in the State Court Records filed June 29, 2009. (Filing No. [17](#) at CM/ECF pp. 1-4.) In Respondents' Brief in Opposition to Petitioner's Motion, Respondents state they will attempt to locate the additional documents and anticipate they will either file the documents or object to them by September 2, 2009. (Filing No. [18](#) at CM/ECF p. 1.) Petitioner has objected to Respondents' Brief in Opposition (i.e., Filing No. [18](#)), arguing that Respondents' Brief is frivolous and should be denied. (Filing No. [21](#) at CM/ECF pp. 1-4.)

In order to give Respondents time to locate the additional records, the court will postpone ruling on Petitioner's Motion to Request Additional Documents until after September 2, 2009. Accordingly, the court finds Petitioner's Objection to Respondents' Brief in Opposition (filing no. [21](#)) should be denied.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Default Judgment (filing no. [14](#)) is denied.
2. Petitioner's Motion for Relief from the State Judgment (filing no. [15](#)) is denied.
3. Petitioner's Motion to Compel (filing no. [16](#)) is granted.
4. The Clerk of the court is directed to set a pro se case management deadline in this case using the following text: 08/30/09: deadline for Respondents to provide copies of the designation of State Court Records filed June 29, 2009, to Petitioner.
5. Petitioner's Objection to Brief (filing no. [21](#)) is denied.

August 11, 2009.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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